

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 495 w/ CS Protective injunctions from repeat, sexual, and dating violence
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 1568

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Crime Prevention</u>	<u>17 Y, 0 N w/CS</u>	<u>Whittier</u>	<u>De La Paz</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Chapter 2003–117, L.O.F., created a specific cause of action for an injunction for protection in cases of sexual violence. Prior to that legislation, section 784.046(2), F.S., contained separate causes of action for protection injunctions for repeat violence and dating violence. The law amended the Petition for Injunction for Protection against Repeat Violence or Dating Violence, to include *Sexual Violence*.

Under current language, either the victim of sexual violence, or the parent or guardian of a minor child who is living at home and is a victim of sexual violence, may petition for protective injunctive relief under two scenarios:

- If the person reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding; or
- If the offender’s term in state prison has expired or is about to expire within 90 days following the filing of the petition.

HB 495 w/ CS authorizes a person who is petitioning for an injunction for protection against sexual violence to be able to file their address separately and confidentially with the court if they need to for safety reasons.

The bill corrects s. 784.047(3), F.S., amending language regarding the penalties for violating protective injunctions against repeat violence and dating violence to include *sexual violence*. The bill makes this offense a first degree misdemeanor, and makes last year’s amendments to s. 784.046, F.S., enforceable.

The bill also corrects s. 784.048(4), F.S., amending language regarding the penalties for someone who violates protective injunctions by knowingly, willfully, maliciously, and repeatedly following, harassing or cyberstalking. The bill amends statutes for injunctions against repeat violence and dating violence to include *sexual violence*. It makes this offense a third degree felony, allowing last year’s amendments to s. 784.046, F.S., to be enforceable.

The bill removes language instructing the Department of Corrections (DOC) to serve respondents of protective injunctions against repeat, sexual, or dating violence if they are in the custody of the DOC. This function will default to Sheriff’s Offices who already serve incarcerated respondents for other types of injunctions.

There is not a significant fiscal impact to the state. Fiscal impact to local governments is indeterminate, but anticipated to be minimal. According to staff at the Judicial Services Division of the Volusia County Sheriff’s Office, given the unique surroundings of an injunction for sexual violence, the number of service for that specific injunction is anticipated to be small.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

In the 2003 session, the Victim’s Freedom Act [Chapter 2003-117, L.O.F.] was passed. It provided a person the opportunity to obtain protective injunctive relief against “sexual violence,” if he or she is a victim of sexual violence and:

- the victim has reported the incident to law enforcement and is cooperating in any criminal proceeding against the offender, or
- the offender’s state prison term is expired or will expire within 90 days following the filing of the petition for protective injunctive relief.

The act provided a broad definition of “sexual violence” as any one incident of:

- Sexual battery, as defined in Chapter 794, F.S.;
- A lewd or lascivious act, as defined in Chapter 800, F.S., committed upon or in the presence of a person younger than 16 years of age;
- Luring and enticement of a child, as described in 787, F.S.;
- Sexual performance by a child, as described in Chapter 827, F.S.; or
- Any other forcible felony wherein a sexual act is committed or attempted,

regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

Chapter 2003–117, L.O.F., created a specific cause of action for an injunction for protection in cases of sexual violence. Prior to that legislation, section 784.046(2), F.S., contained separate causes of action for protection injunctions for repeat violence and dating violence.

Under current language, either the victim of sexual violence, or the parent or guardian of a minor child who is living at home and is a victim of sexual violence, may petition for protective injunctive relief under two scenarios:

- If the person reported the sexual violence to a law enforcement agency and is cooperating in a criminal proceeding; or
- If the offender’s term in state prison has expired or is about to expire within 90 days following the filing of the petition.

The 2003 legislation amended the Petition for Injunction for Protection Against Repeat Violence or Dating Violence, to include *Sexual Violence*.

Chapter 2003-117, L.O.F., while creating a specific cause of action for an injunction for protection in cases of sexual violence, neglected to amend the violations sections to make them enforceable.

This bill amends s. 784.047(3), F.S., correcting language regarding the penalties for violating protective injunctions against repeat violence and dating violence to include *sexual violence*. The bill makes this offense a first degree misdemeanor and makes last year's amendments to s. 784.046, F.S., enforceable.

The bill amends s. 784.048(4), F.S., correcting language regarding the penalties for someone who violates protective injunctions by knowingly, willfully, maliciously, and repeatedly following, harassing or cyberstalking. The bill amends statutes for injunctions against repeat violence and dating violence to include *sexual violence*. The bill makes this offense a third degree felony, allowing last year's amendments to s. 784.046, F.S., to be enforceable.

HB 495 w/ CS also authorizes a person who is petitioning for an injunction for protection against sexual violence to be able to file their address separately and confidentially with the court if they need to for safety reasons.

Under current law, if the respondent for a petition for protective injunction against repeat, sexual or dating violence is in the custody of the DOC [see s. 784.046(8)(a)2., F.S.], the clerk of the court is to furnish a copy of the petition, notice of hearing, and temporary injunction to the DOC to be served upon the respondent. This language doesn't specify how the Clerk is to determine where and to whom at DOC to send the paper work, it does not direct the DOC to return paperwork to the Clerk or the Sheriff's Office so they may know that the respondent has been served, and DOC officers have little or no training in service of injunctions.

To resolve these issues, the bill removes statutory language instructing the Department of Corrections (DOC) to serve respondents of protective injunctions against repeat, sexual, or dating violence if they are in the custody of the DOC. This function will default to the sheriff having jurisdiction where the respondent is located. Sheriff's Offices already serve incarcerated respondents for other types of injunctions and it is reported by the Sheriff's Association that Sheriffs' Offices in Florida serve thousands of injunctions each year.

The bill eliminates duplicative language in s. 901.15(10), F.S., which gives warrantless arrest authority when probable cause exists that a respondent to a repeat violence injunction has committed an act of repeat violence. This paragraph is unnecessary since s. 901.15(6), F.S., was amended some time ago to include violations of repeat violence injunctions. This would result in all warrantless arrest authority for protective injunctions being covered in only one place in the statutes.

Other portions of the bill correct technical cross-references to statutes amended by the bill.

C. SECTION DIRECTORY:

Section 1. Amends s. 784.046, F.S., addressing sworn petitions by victims of repeat violence, sexual violence, or dating violence for protective injunctions.

Section 2. Amends s. 784.047, F.S., addressing penalties for violating protective injunctions.

Section 3. Amends s. 784.048, F.S., addressing penalties for stalking.

Section 4. Amends s. 901.15, F.S., addressing when an arrest by an officer without a warrant is lawful.

Section 5. Amends s. 20.165, F.S., correcting a cross-reference.

Section 6. Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate, but anticipated to be minimal. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to staff at the Judicial Services Division of the Volusia County Sheriff's Office, given the unique surroundings of an injunction for sexual violence, the number of service for that specific injunction is anticipated to be small and would have a minimal fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 17, 2004, the Committee on Public Safety & Crime Prevention passed the bill favorably with three amendments. Changes between the original and the amended bill include the following:

- Amended language regarding a petitioner for sexual violence injunction filing their address in a separate confidential filing if they need to *for safety reasons, pursuant to s. 119(7)(s), F.S.* The original bill did not mention safety reasons and cited broader statutory and constitutional references.
- Removed duplicative language for warrantless arrests. See Effect of Proposed Changes.
- Removed language instructing the Department of Corrections (DOC) to serve respondents of protective injunctions against repeat, sexual, or dating violence if they are in the custody of the DOC.